REMARKS/ARGUMENTS

Status:

Claims 1, 3-20, 22-29, 34, 35, and 59-72 remain pending. The allowability of claims 1, 3-20, 322-29, 34 and 35 is withdrawn in light of U.S. Patent 5,600,364 ("*Hendricks*") and U.S. Patent 7,007,049 ("*Peng*") and other references.

Further:

- Claims 67-72 are rejected based on 35 U.S.C. 101;

- Claims 63-66 and 69-72 are alleged to be anticipated by *Hendricks*;

- Claims 23-25, 27, 28, 59, and 67 are alleged to be anticipated by *Peng*;

- Claims 1, 3-6, 8, 10, 12 and 13 are alleged to be obvious over *Peng* in view of U.S. Patent 5,870,539 ("Schaffer");

- Claims 14, 15, and 17-20 are alleged to be obvious over *Peng*;

- Claims 7, 9, 11, 16, 29, and 68 are alleged to be obvious over *Peng* in view of *Hendricks*;

- Claim 22 is alleged to obvious over *Peng* in view of U.S. Patent 6,058,383 ("Narasimhalu");

- Claim 34 is alleged to obvious over *Hendricks* in view of *Peng*;

- Claim 35 is alleged to be obvious over *Hendricks* in view of Schaffer; and

- Claim 26 and 60-62 are alleged to be obvious over *Peng* in view of U.S. Patent 6,148,401 ("Devanbu").

Discussion of Claim Amendments

Applicant has amended various claims, largely in order to maintain consistency between the claim language and the specification. Specifically, the specification largely uses the term "host files" as opposed to "host software file", and the claims are amended herein to reflect this usage. Other amendments are self-explanatory.

Discussion of Certain Limitations

Many of the claims herein recite a "host file" which the specification indicates can comprise different types of files. A *host protocol file* contains message format data so that configuration commands can be created, where the configuration commands are sent to a host to configure it. This is similar to a programming language manual indicating the set of possible commands to select from when configuring a host. A *host profile file* typically defines capabilities of a host, which allows intelligent use of the host protocol file to create the configuration commands, wherein the configuration commands are sent to a host. Both of the host protocol file and the host profile file are used by the system operator (or another party) to create the configuration commands for configuration a host. (see, e.g., par. 270-273). Further, the system operator may require additional information (such as service related information) needed to populate certain parameters in the messages. (Par. 73.) Note that the host protocol file and host profile file are not downloaded to a host, but used by a *configuration message set generation system* to create the configuration messages. (Par. 260.) A *configuration message set* is a set of configuration message to configure a particular service. The configuration message set incorporates the protocol messages in the host protocol file in conjunction with service related parameters to define a host-specific message to configure a specific type of host for a specific service. (Par. 73). Finally, there is another type of host file that is a host data file, which contains data, application code, or other software that is downloaded to a host. (par. 260.)

As will be discussed below, the prior art references disclose downloading software, commands, or other data do not anticipate or render obvious the "host protocol" or "host profile"

limitations. Further, prior art that disclosed downloading files to a wireless device, is distinct from downloading files to a system operator, which uses the files to create messages which are sent to a host.   Specific instances are discussed further for specific claims and specific prior art references.

Claim Rejections – 35 U.S.C. § 101

Independent claims 67 and 69 are alleged to be directed to non-statutory subject matter because these claims are interpreted as being interpreted as (only) "software" and the Examiner indicates that the "system must include at least one hardware component (i.e., a processor or a memory)."

Applicant requests that if the Examiner maintains the rejection to then provide support, such as a Federal Circuit case, a BPAI decision, or MPEP guideline as to why a system directed to software is non-statutory.

 Further, the Examiner alleges that the system must include at least one hardware component. To this extent, Applicant notes that several limitations in these claims can only be construed as "hardware" in some manner. Hardware components are not limited to only a "processor or a memory").

For example, claim 67 recites "a data processing system" which comprises "a database" as well as a "communications network." Claim 69 recites "an enhanced services system operatively connected to a communications network" as well as a "cable distribution network having a headend."   .

While none of these limitations are strictly "a processor or a memory" as stated in the Office Action, one of ordinary skill in the art would interpret any of the above limitations as involving hardware (either a component or a collection of components). There is no reasonable basis for alleging that a "communications network" is software (only) and that a "cable distribution network" is also only software. Thus, the above limitations involve hardware components in some manner as one skilled in the art would reasonably interpret.

Applicant submits that to the extent a hardware component is required to make the claim eligible for patenting, the above limitations in claims 67-69 recite hardware components that make the claims (and the associated dependent claims) patent eligible. Applicant requests that the 101 rejection be withdrawn, or otherwise that some support be provided as to why each of the recited limitations are not considered by one of ordinary skill in the art as reciting hardware in some form.

Claim Rejections – 35 U.S.C. § 102

Claims 63-66 and 69-72 are alleged to be anticipated by *Hendricks*. As to claim 63, *Hendricks* is alleged to anticipate the limitation of a "host protocol file" by disclosing a "program." Hendicks is also alleged to anticipate the limitation of a "host profile file" by disclosing "control signals."

Host-Specific Files: "Host protocol file" and "Host profile file"

The present specification describes host files which are specific to a host - "host specific files." These files contain information applicable to a type of host (typically characterized by a particular manufacturer and model of a host). Two forms of host file are "host protocol files" and "host profile files." The similarity of the words may cause confusion, but these are distinct files with different purposes. The "host protocol file" is "used by the cable system operator to create a 'configuration messages' and can used to configure and enable a specific set top box. These messages may have to have parameters specified in order to be actionable configuration message. The host protocol file can be used in conjunction with service related parameters to define a host-specific message to configure a specific type of host. (See, par. 73.) The "host profile file" describes the functionality of a particular type of host. See, e.g., par. 73. This is also needed in order to generate the appropriate configuration messages to effect a service in a host. For example, if a host does not have a HDTV tuner, then this may impact what messages are sent to configure the host for services.

Independent Claim 63

Hendricks does not disclose a "host protocol file"

The Examiner is alleging that disclosure of a "program" sent to the host anticipates the "host protocol file" limitation. However, the "host protocol file" is not a program per se, but the set of commands which can be used to "create a 'configuration message set' for configuring the host. An actual configuration message may require a service parameter, which is why the specification indicates that a host-specific configuration message is created using service parameters along with the host protocol file. A configuration message set is the set of messages which configures the host for a host. Hence, the configuration message set is an 'ordered' set of messages.

To use an analogy, a computer program, which is a set of ordered instructions, can be analogized to a novel, which is an ordered set of words telling a story. A dictionary, which is the set of available words from which the words in the novel are selected from, does not disclose the story in the novel. Just because all of the words in the novel are found in a dictionary does not mean the dictionary discloses the novel. (Indeed, if so, then a dictionary would tell the story of every novel written, or in other words, a dictionary would anticipate every novel). Similarly, the host protocol file is the set of messages that can be understood by that type of host, and which are used by personnel to create commands, but the host protocol file by itself is not a program. The host protocol file is the set of protocol messages from which configuration messages are created.

The absence of a meaningful structure and order of messages in the host protocol file distinguishes the host protocol file from a program. These are not the same, and thus disclosure of a program in the prior art does not render obvious the limitation of a "host protocol file."

Hendricks does not disclose a "host profile file"

The specification discloses that the "host profile file" describes the functionality of a host. (Par. 73.) The disclosure in *Hendricks* of "control signals" is alleged to anticipate the "host profile file." A file containing information describing something is not the same as

"control signals." A file describing a host is *data*, while control signals are similar to *commands*. The disclosure of *commands* to a host does not anticipate a "host profile file." Further, the host profile file is used to drive a user interface for personnel in creating configuration commands. (Par. 260.) Control signals are not intended to be processed by a person.

To use another analogy, the host profile file is like a guide used by programmers indicating the system capabilities. For example, it may indicate how many disk drives are present, how many input/output ports are present. Merely indicating the capabilities of a device is separate from the control signals which actually control the device. Thus, disclosure of a control signal sent to a host does not anticipate or render obvious the "host profile file" limitation.

Summary – independent claim 63

Hendricks' disclosure of a program and control signals does not disclose the "host protocol file" and the "host profile file." Applicant requests that the rejection be withdrawn, as anticipation requires each of the limitations to be disclosed. Further, dependent claims 64-66 are also patentable because the prior art does not disclose the limitations of the independent claim.

Independent Claim 66

The Office Action alleges disclosure of "analog NTSC signals" are executable commands on a processor in a host. Applicant submits that analog video signals, which have been used by televisions long before any processors were used in television sets, do not broadly constitute any type of executable command on a processor.

Independent Claim 69

Claim 69 has been amended to consistently refer to "host file." Further, because the file is downloaded to a host, the host file comprises, e.g., a "host data file." (This is to avoid any confusion, such as may occur if the above limitation "host file" is interpreted as downloading,

e.g., a "host profile file" to a host.) However, this amendment does not change the analysis in any significant manner.

Claim 69 is alleged to be anticipated by the disclosure in *Hendricks* of the presence of various databases including a "(1) Viewer Profile database 314, (2) the Account/Billing database 316, (3) the Program Library database 318,..." Because the database must store a "host file" which is transmitted to a host, the "Viewer Profile" and "Account Billing" databases cannot disclose this limitation, as there is no allegation that any of these database comprise "host files" that are sent to a host. Thus, Applicant assumes that the "Program Library" database is alleged to anticipate the database storing the "host file." Thus, Applicant presumes that the Examiner alleges that the "programs" in the library are "host data files." If this assumption is incorrect (which may be as discussed below in conjunction with claim 70), Applicant requests clarification as to which database specifically is alleged to anticipate this limitation.

Hendricks' disclosure cannot anticipate this limitation as the "Program Library" disclosed in Hendicks (Fig. 11, 29:45-53) refers to *television programs* – e.g., programs pertaining to categories such as "movies, sports, science fiction, and news." (*Hendricks*, col. 31:4-5.) Thus, the "Program Library" is a collection of video programming, and not computer programs.

Further, the claim requires that the database "stores at least one host address associated with the host data file." This is consistent with the host data file being tailored to a particular host manufacturer and model. (See, e.g., par. 260.) Therefore, *Hendricks* is distinguishable for two reasons. First, *Hendricks* discloses storing *video programming*, not *computer programs*. The mere fact that the claim and *Hendricks* share the common word "program" is not sufficient to anticipate the limitation when it is clear from the context that the one database (in the claim limitation) pertains to storing software programs and the other database in the prior art stores video programming (e.g., movies). These are not the same, and no argument is provided that they are the same. Because host files are associated with a given type of host (e.g., determined by a manufacturer and model identifier), disclosure of storing a file comprising a television program is not a host specific file. Television programs are inherently compatible with all televisions.

Further, even if a database of video programs would anticipate a database of "host software file" there is no disclosure (nor any reason to presume) that *Hendricks* would store a program associated with a particular host manufacturer and model. It is well known that video programs in a cable system are designed to be viewed by televisions of different makes and models, and that the cable operator has no reason to specifically associate a video program in conjunction with "host address." There is simply no disclosure, nor any allegation that this is disclosed by *Hendricks*.

Consideration of Claim 70 with respect to claim 69

Claim 70 recites that the "host type comprises a host manufacturer identifier and a model identifier of the host manufacturer." The Examiner correctly points out that *Hendricks* discloses that "Viewer Profile Database" includes examples of information stored therein as "set top terminal type, software version and set top terminal identification/serial number." (*Hendricks* 30, 1-2).

First, the claim recites the *same database* storing the host data file as associating it with the host address. Thus, disclosure of the Viewer Profile Database is deficient because it does not (presumably) disclose "host data files" transmitted to the host. The Viewer Profile maintains information about the viewer.

Presumably, the Examiner may have intended, instead, to refer to Fig. 12, which discloses the Set top ID file being replicated in each of the databases, including the Program Library database. Attention is brought to the Examiner that *Hendricks* discloses that the "[t]he Set top ID file 330 contains the key data that links each relational database with one another, *as described below.*" (*Hendricks* 30, 1-4).

However, in the description that follows in *Hendricks*, there is no association between the Set top ID file and the Program Library database. Specifically, there is no association with "the host address" as recited with the Program Library. *Hendricks* does disclose an association between the Set top ID file and other databases, specifically the *Customer ID* with the geography

(*Hendricks* 30, 2-12), demographics (30:14-49), and billing information (30:50-59). However, the discussion concerning the Program Library Database (30, 60 – 31:7) merely states that the Program Library stores video programming and the Set top ID file. *But there is no disclosure of how these are associated with a host address.* The fact there are linkages of various types described for the Account/Billing database (30:50), the Program Scheduling database (31:9), the Advertisement Library (31:23), and the Advertisement Scheduling database (30:30), only emphasis the lack of association with the Program Library database.

Thus, because *Hendricks* states that "[t]he Set top ID file 330 contains the key data that links each relational database with one another, *as described below* " and the following text in *Hendricks* does not describe that relationship, there must not be any relationship beyond what is described (e.g., merely storing the data in the database). Thus, it is improper to read in any relationship of the data in *Hendricks*, beyond what is disclosed.
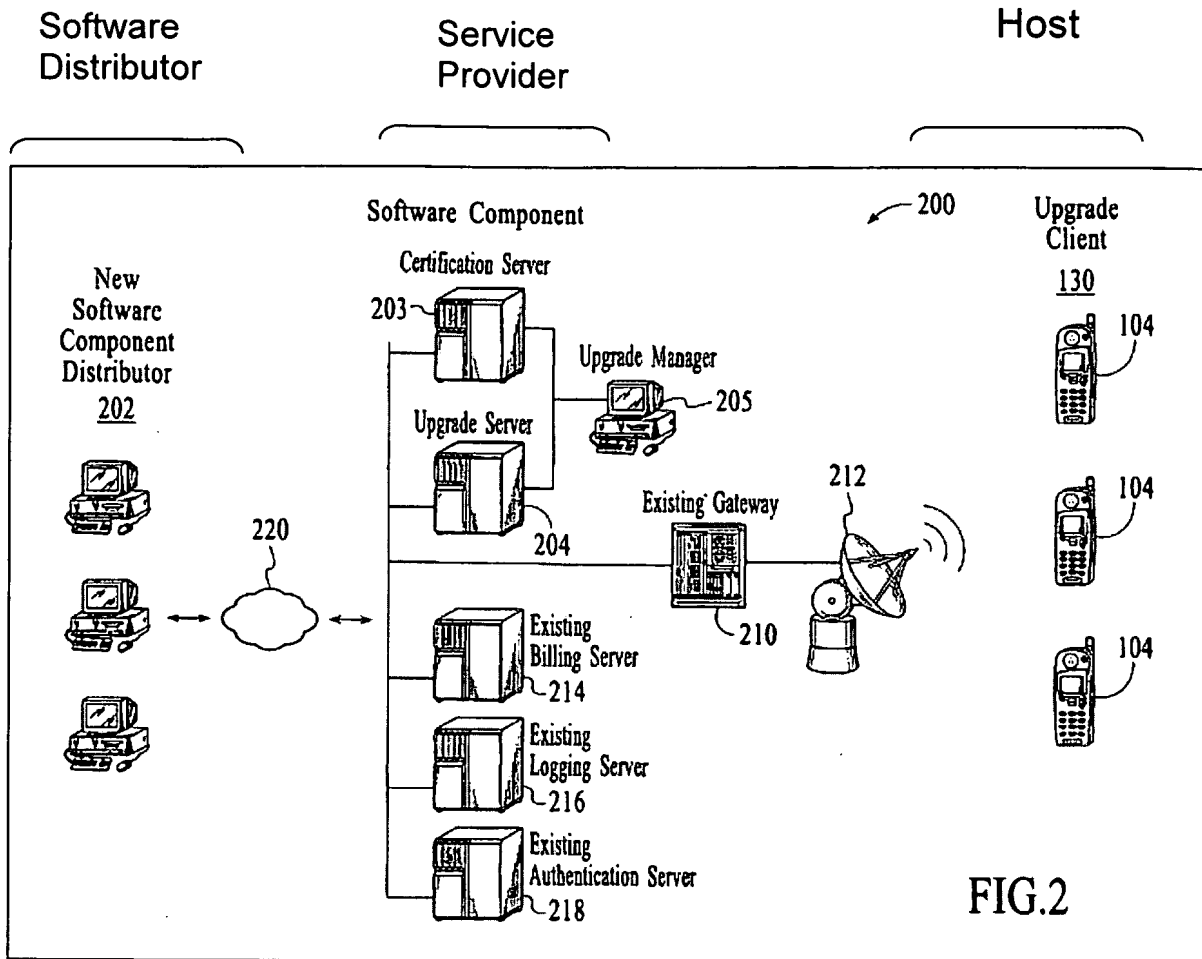
Summary – claim 69

There is no support for the allegation that *Hendricks* supports the claim limitation of "a database that stores "one host data file associated with a host type in a database" as well as the "database stor[ing] at least one host address associated with the host data file."

Independent Claim 23

Independent claim 23 (as well as independent claim 59 and 67) is alleged to be anticipated by *Peng*. *Peng* pertains to a software distribution system for wireless devices, but does not disclose the limitation as recited herein in the same manner.

First Interpretation of *Peng* (Pages 7-10 of Office Action)

Peng discloses the following architecture, which can be roughly categorized as 1) software distributor, 2) service provider, and 3) hosts.

Software
Distributor

Service
Provider

Host

Software Component

/— 200

Upgrade
Client
130

Certification Server

New
Software
Component
Distributor
202

203 —

Upgrade Manager

— 205

Upgrade Server

220

204

212

Existing Gateway

— 210

104

104

104

Existing
Billing Server
— 214

Existing
Logging Server
— 216

Existing
Authentication Server
— 218

FIG.2

In the present claim, there is a "host file database" which receives the host file, and an enhanced services systems ("ESS"). The host file database transmits the host file to the ESS.

Thus, initial questions are:

What in *Peng* is alleged to disclose the "host file database"?

What in *Peng* is alleged to disclose the ESS?

The Office Action does not make this clear. First, the Office Action (page 8, lines 1-2) indicates that the "upgrade servers" (204 of FIG. 2) correspond to the host file database. However, later

on, in regard to "transmitting the host file from the host file database to the enhanced services system," the host file database is alleged to correspond to the disclosure of the "upgrade server 204 uses the original handset data communication protocol to send the delta file to the requesting handset." (OA, page 9, lines 12-14.) Thus, in this instance, the Office Action alleges the ESS is the handset. The handsets in FIG. 2 above would correspond to the hosts, not the enhanced services system. In the present specification, the ESS is indicated as part of the cable headend. See, e.g., FIG. 9 and par. 267.

Similarly, claim 23 recites "establishing a communications path between the host file database and the enhanced services system, the communications path using the destination address." The "destination address" is previously introduced as "the enhanced services system further associated with a destination address," so the destination address is that of the enhanced services system (not an end user).

Peng does not anticipate this limitation by its disclosure of "the server 204 sends a user notification to notify the client device user that these are software components available for updating." Sending a notification to the end user implies the end user is the enhanced services system, which is incorrect. Further, an address of an end user is not the same as the address for the enhanced services system. As recited in the claim earlier, the host file is for configuring a "host", and thus a "host" is distinct from an enhanced services system. If the wireless devices are alleged to correspond to the enhanced services system, what then are the "hosts"?

Fundamentally, the various limitations in claim 23 do not read on the components in *Peng*. If the Examiner believes they do, then clarification is sought by the Applicant as to which components in *Peng* correspond to the host file database, the enhanced services system, and the host.

Claim 23 -Alternative Interpretation of *Peng* (page 10-11)

In this interpretation, it appears that the host file database is that entity which submits software packages to the software component certification server in *Peng*, which is received

from the software component distributor (202) of Figure 2. The Enhances Services System is thus alleged to be the certification server 203 in *Peng*.

Obviously, *Peng* does not disclose the software distributor providing "messages for interacting with the host on a cable distribution network" because *Peng* discloses sending files to wireless telephones, PDA, etc., and thus cannot anticipate the claim as alleged.

Further, with respect to the "establishing a communications path" limitation involving the host file database and the enhanced service system, the Office Action alleges this is obvious by the communication involving the "certification server 203 and the upgrade server 204." Thus, in order to meet this limitation, it appears the certification server is now alleged to the host file database. In essence, different structures in *Peng* are alleged to read on the claim limitations at different times.

Again, the various limitations in claim 23 do not read on the components in *Peng*. If the Examiner believes they do, then clarification is sought by the Applicant as to which components in *Peng* correspond to the host file database, the enhanced services system, and the host.

Dependent Claims 24 and 25

Dependent claim 24 recites limitations involving the sending of the host file from the enhanced service system to a host. In this case, *Peng*'s disclosure of transmitting files from the upgrade server to the client device (wireless handset) is alleged to disclose these limitations.

This allegation by the Office Action highlights the inconsistent application of *Peng*. In this claim, the client devices are alleged to be the hosts, whereas in claim 23, the client devices were alleged to be the enhanced service system. In essence, different structures in *Peng* are alleged to read on the claim limitations at different times. Thus, the Examiner has not made out a cogent case as to how *Peng* discloses the limitations of claim 24 and independent claim 23.

Independent Claim 59

Claim 59 is alleged to be disclosed by *Peng* as well. Claim 59 recites that the host file that is received by the host file database and downloaded to the ESS, and that the downloaded host file comprises 1) "a host protocol file" and 2) "a host profile file." The host protocol file comprises "protocol message format information for communicating with the host type" and the host profile file indicates "capabilities of the host type."

Neither the "host protocol file" and the "host profile file" are disclosed by *Peng*. While *Peng* discloses a variety of file types that can be downloaded, *Peng* discloses files comprising data or commands downloaded to the host for execution. None of these files contain "protocol message format information" which is used to generate messages for communicating with the host. The present specification states "the host protocol files are used by the cable system operator to create a "configuration message set" [that are] used to configure and enable a specific set top box for the desired service." (Par. 73.) In other words, in this claim the host protocol file comprises information about the protocol message format that is used by the enhances services system to create the messages for configuring the host.

Similarly, *Peng* does not disclose a "host profile file," which is data describing the "capabilities of the host type." None of the files listed in the Office Action describe capabilities of the host type ("software files including dynamic link library files, shared object files, embedded software components (EBSCs), firmware files, executable files, data files including hex data files, system configuration files, and files including personal use data"). In fact, the purpose of the "host profile file" is different from the files disclosed in *Peng* that are downloaded to a wireless terminal. In the present disclosure, the host profile file describes capabilities or functionality of the host which are used to create a 'configuration message set.' (Par. 73.) Specifically, par. 124 states:

> The creation of the configuration message set ("message set") used to configure a type of host is illustrated in Figure 10. The creation of the configuration message is defined for a specific type of host and for a specific type of service. The configuration message set for a particular host may be determined by the cable system operator's service personal or a third-party. The message set

is created typically using a configuration message set creation system ("workstation") in the form of an application program on a workstation that provides a user-interface for personnel to select the parameters for the service. The parameters that can be altered are derived from the host profile file, which describes the capabilities of the specific type of host. The host profile file is provided by the host manufacturer and facilitates processing by the creation system by 'driving' the user interface in the workstation. The specific messages generated that comprise the message set are determined from the host protocol file and are specific to the host type. The messages further are associated with configuring certain parameters with certain values.

Thus, the "host profile file" is not downloaded to a host, but is used to create messages which the ESS sends to configure the host.

Compare this with the files that are downloaded in *Peng* to the host. The files in *Peng* are the operating or data files for execution of the host. (*Peng*, col. 1 and 2). Thus, the host profile file, which is not downloaded to the host, is not the same as the executable file types in *Peng* which are downloaded to the host.

To use an analogy, this is similar to providing a dictionary (host protocol file) and a set of guidelines (host profile file) to facilitate one person drafting a letter to another person. The dictionary and guidelines provided the first person are not the same as the letter written by that person. Or to use another analogy, providing a programmer with a document describing the capabilities of a computer along with a programming language specification guide is not the same as a program written for that computer. Obviously, the commands in a particular program must be described in some manner in the language programming guide, and must conform to the capabilities of the computer (e.g., how many disk drives are present, input/output ports, etc.) but such manuals are different from a program.

Independent Claim 59 - "transferring the host file from the host file database to the enhanced services system"

This limitation is not disclosed by *Peng* either. The Office Action alleges this is anticipated by the disclosure of "the upgrade server 204 [using] the original handset data

communication protocol to send the delta file to the requesting handset." (OA, page 15.)
Sending a file to a host is not the same as sending a file to the ESS. The ESS is located in the headend, and is not the same as a host. Thus, disclosure of downloading a file to a host in *Peng* does not anticipated sending a file to the ESS.

Independent Claim 67

Claim 67 is alleged to be disclosed by *Peng*. There are at least two limitations that are not disclosed by *Peng*.

First, claim 67 recites that the data processing system comprises a database that stores "the host file" along with a "certification file." Thus, two separate files are stored. The Office Action states "Note: the approved software packages themselves can be certification file." (O.A., page 16). The claim recites that two distinct files are stored, and alleging this is anticipated by storing one file (the "approved software package") reads out the requirement of two files. Further, the implication that the presence of a file implies it is certified negates aspects of the invention as described in paragraph 266, which describes accepting "certified" host files as well as non-certified host files. If every file present must be an indication of "certified" host files, then it would be impossible to accept non-certified host files.

Second, the claim recites storing the host file while maintaining an association with a "host manufacturer" as well as an association with a "specific host model of the host manufacture." While *Peng* discloses receiving software upgrade components as alleged, there is nothing in the disclosure identified in the Office Action (e.g., *Peng* 7:46-54) that indicates the system maintains an association with the host manufacturer and a model thereof. Receiving a file from a software distributor does not indicate that an association is maintained for that file regarding the host manufacturer and model thereof that the software is associated with.

While software downloaded to a particular mobile device may be compatible with a particular manufacturer, or ever manufacturer and model of a mobile device that by itself does

not mean the any association of the software and the host type is maintained by the database transmitting the host file.

Claim Rejections – 35 U.S.C. § 103

Claims 1, 3-6, 8, 10, 12, and 13 are alleged to be obvious light of *Peng* and Schaffer. However, *Peng* does not disclose the limitation in claim 1 of:

> *providing the host file from the host software manufacturer to a certification entity;*

> *testing the operation of the host file by the certification entity;*

> *certifying the host file for operation in a host wherein certifying the host file for operation in a host comprises certifying the host file for execution on a host associated with a specific host manufacturer and a model associated with the specific host manufacturer.*

First, there must be a "certification entity" distinct from the host software manufacturer which receives the host file and tests it. The testing involves testing operation of the file in a host. Thus, *Peng*'s disclosure of a "certification server 203" in column 7 is distinguishable because it does not test the software. There is no disclosure that the certification server 203 testing the operation of the software, and further, *Peng* implies that the "certification" provided is that only authorized software distributors can download software ("...the software component certification server 203 provides carrier-grade security control over potential instruction and data tampering during the software component submission process.") Thus, it appears that while *Peng* certifies the source of the software, there is no disclosure of the server testing and certifying the operation of the of the host file.

It appears that Schaffer is relied upon for this limitation, but it appears that

Schaffer discloses the "designer" (e.g., the software designer) as developing the test cases. The "designer" would be part of the software manufacturer, and there is no disclosure or suggestion that a separate certification entity is testing the software.

Second, *Peng*'s disclosure does not render obvious the limitation of "transferring the host software file from the host file database to the enhanced services system." It is alleged that this is rendered obvious by *Peng*'s disclosure of transferring a file from the upgrade server to the handset. (Office Action, page 19.) Downloading a file to a wireless handset is not the same as downloading software to a enhanced services system, which is typically located in the cable headend and is certainly not the same as a host. Reading these as the same effectively reads out the "host" limitation in the claim.

Claim 3

Claim 3, which recites "wherein the data processing system is operated by the certification entity or the host software manufacturer", and is alleged to be obvious in light of *Peng*'s disclose of "the software component certification server 203... distributes approved software packages to upgrade servers."

It appears that the "database processing system" (which receives the host file after certification) is alleged to correspond to the upgrade servers. Thus, the upgrade servers in *Peng* would have to be operated by the certification entity or the host software manufacturer. However, it was admitted in the Office Action by the Examiner that *Peng* is not the certification entity (as Schaffer is used for rending that limitation obvious), so it must be alleged that the database processing system (corresponding to the upgrade servers) is operated by the "host software manufacturer." However, *Peng* clearly teaches that the software distributor is distinct from the service operator (e.g., See *Peng*, Fig. 1).

Thus, the Office Action has merely stated *Peng*'s disclosure of software being distributed without identifying which element is operated by the certification entity of the host software manufacturer.

Claim 4

Claim 4, which has been amended to recite "wherein the host file includes at least one of a host protocol file, host data file, host profile file, or host configuration message set," are alleged to be rendered obvious by *Peng*'s disclose of the electronic files comprising "dynamic link library files, shared object files, embedded software components, firmware files, executable files, data files, including hex data files, system configuration files and files including personal use data." None of the identified files are "a host protocol file, host data file, host profile file, or host configuration message set." These files, as explained previously are not executable files sent to a host.

Claims 14, 15, and 17-20

Independent claim 14 is alleged to be obvious over *Peng*. Claim 14 recites transferring "a host protocol file and a host profile file." These two files are indicated by the present specification as being particular types of files, and indicates the host protocol file is used to create a configuration message set, and the host profile file is a file that describes the functionality of a type of host. (See, par. 73). In the present specification, these files are not downloaded to the host, but used by, for example, a cable operator to interact with a host.

Peng merely discloses that "software packages" are sent to servers, which are then sent to wireless handsets. Obviously, these packages are downloaded to the hosts, and are not the same types of files as recited in claim 14. Because the types of files and use of the files are different from claimed, *Peng* cannot render obvious claim 14 at least for this reason.

Further, claim 14 has been amended to recite "producing the host file ~~software~~ by a host software manufacturer to facilitate creation of configuration messages to control a host on a cable network." *Peng* does not pertain to hosts on a cable network, nor are the

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files disclosed in *Peng* used to "facilitate creation of configuration messages to control a host"; rather, the files in *Peng* are the configuration messages themselves.

Claim 15

Claim 15 has been amended to recite that "wherein the host protocol file comprises ~~at least one~~ a plurality of host specific protocol messages ~~message~~ used by an operator of an enhanced services system ~~server~~ to create said configuration messages to interact with the host." *Peng* does not disclose the service provider creating configuration messages, but only downloading software to the wireless device.

Claims 7, 9, 11, 16, 29, and 68

Claim 7 recites that the "host profile file is used to create a user-interface ...." The Office Action alleged the "host file" is met by the disclosure in *Hendricks* of the set top terminal is able to store menu templates for creating menus that are displayed on a subscriber's television by using an array of menu templates." Office Action, page 29. Thus, the "menu templates" in *Hendricks* are alleged to be the "host profile file." If Applicant's understanding is incorrect, appropriate correction is requested.

The "menu templates" by plain meaning, are data used to create menus. These are files sent to a set top box (host). The "host profile file" is not sent to a host, but is used to create configuration messages. Specifically, paragraph 124 of the specification states:

> The creation of the configuration message set ("message set") used to configure a type of host is illustrated in Figure 10. The creation of the configuration message is defined for a specific type of host and for a specific type of service. The configuration message set for a particular host may be determined by the cable system operator's service personal or a third-party. The message set is created typically using a configuration message set creation system ("workstation") in the form of an application program on a workstation that provides a user-interface for personnel to select the parameters for the service. The

> parameters that can be altered are derived from the host profile file, which describes the
> capabilities of the specific type of host. The host profile file is provided by the host
> manufacturer and facilitates processing by the creation system by 'driving' the user
> interface in the workstation.

The "menu templates" sent to a host for providing menu options to a user are not the same as the "host profile file" which describes the capabilities of a specific type of host. The purpose of the host profile file is to facilitate the service provider, not the client, to interact with the device. (Office Action page 29). Thus, *Peng* does not render obvious claim 7.

Claim 9

Claim 9 pertains to the enhanced service system, not to the host, when it recites "authenticating the host file database to the enhanced service system." Thus, *Peng*'s disclosure of authenticating the wireless device (e.g., host) is distinguishable. Authenticating a wireless device would potentially be applicable to authenticating a host, but not to the above claim involving the enhanced services system. Thus, *Peng* does not render obvious claim 9.

Claim 11

Claim 11 also pertains to the host file database and the data processing system, and not to the host. *Peng*'s disclosure of the wireless device is inapplicable with respect to the above limitations because the wireless device is not the same as the enhanced services system.

Claim 16

As discussed above, *Hendricks* is inapplicable to claim 16 because *Hendricks* discloses the Viewer Profile database as storing the Set Top ID File. It appears that the Set Top ID File is alleged to disclose a host profile file, which indicates a specific host manufacturer and model.

However, all *Hendricks* states is that examples of information include "set top terminal type, software version, and set top terminal identification/serial number." It does not say explicitly state the "terminal type" comprises "a specific host manufacturer and a model associated with the specific host manufacturer." The "type" could refer to a set top box with or without a hard disk, capable of high definition or not, etc. There is no identification that it would be the manufacturer and model information.

Claim 29

Claim 29 recites that "establishing a communication path between the host file database and the enhanced services system is determined in part based on a time indicated in the communication parameters." This is alleged to be obvious in light of *Hendricks'* teaching of "information includes the date and time slot, and program category of the various programs."

The information referenced in *Hendricks* is introduced in column 8, lines 26 and clearly discusses packaging of "television programs." Specifically, the "date and time slot" refer to when the television program is to be broadcasted from an operations center on the satellite transponder. This does not recite a time for establishing a communications path between the host file database and the enhanced services system, nor is it consistent with the alleged corresponding components identified in claim 23. If the Operations center is alleged to disclose the host file database in claim 29, then it must also correspond to the host file database in claim 23, which is not what was alleged in regard to claim 23.

Claim 68

Claim 68 is alleged to be obvious in light of *Peng* and *Hendricks*. *Peng* is alleged to disclose the limitations of claim 67 and *Hendricks* the limitations of claim 68.

However, the combination of *Peng* and *Hendricks* does not readily make sense. Namely, claim 68 recites "a cable distribution network operatively connected to the enhanced services system at a headend of the cable distribution network...." *Peng*'s wireless handset devices are

alleged to be the "enhanced services system" (see, Office Action page 16). Thus, somehow, the Examiner is alleging that one skilled in the art would be motivated to connect the cable system in *Hendricks* with the wireless terminals in *Peng*. This does not make sense since wireless devices are not connected to a wired network, much less a cable network.

Independent Claim 34

Claim 34 recites in part "determining if the host file received matches one of the plurality of host types associated with the enhanced services system." Recall that host files are generated for a particular host type, and hence it is necessary to know the host type a host file is associated with.

However, television sets of all types are designed to process television signals. There is no need for a television signal provider to know if a television program "matches one of the plurality of host types". It simply does not make sense. For example, a cable system operator does not match a video television program to a certain brand of television sets in the cable system.

Consequently, the cited portions of *Hendricks* do not disclose this limitation. *Hendricks* discloses packaging television programs for different transponders, which go to different cable headends or set top terminals (the latter is presumed to refer to direct satellite signal reception). However, nothing indicates that there is any determination whether the television program matches one of the plurality of host types in the enhanced services system. At most, this discloses real time video signals are directed to a transponder that are picked up by receivers, which is not the same as the recited limitation.

Claim 60

Peng does not disclose a cable network, and hence it is improper to rely on *Peng* for disclosing the limitation of "the server operatively connected to a cable distribution network."

Claim 61

Claim 61 recites a message "transmitted in a two-way cable network" and *Peng* does not disclose a cable network. Hence, it is improper to rely on *Peng* for disclosing this limitation.

Summary:

Peng and *Hendricks* do not disclose the various limitations, particularly the "host profile file" and the "host protocol file". The purpose of the files disclosed in the prior art is different. In addition, the Examiner has not consistently identified which elements in the prior art correspond to the claim limitations (e.g., enhanced service system, host, database). Thus, the allegations of a dependent claim are inconsistent with the allegations of the independent claim.

Applicant further submits that the dependent claims are allowable over and beyond the reasons identified herein, for depending on an allowable independent claim. Thus, Applicant respectfully requests the rejections with withdrawn.

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Amdt. dated January 21, 2009
Reply to Office Action of September 17, 2008

CONCLUSION

It is not believed that extensions of time or fees for net addition of claims are required,
beyond those that may otherwise be provided for in documents accompanying this paper.
However, in the event that additional extensions of time are necessary to allow consideration of
this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required
therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit
Account No. 16-0605.

Respectfully submitted,

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